IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. CIVIL WRIT PETITION NO.5863/2004

Mohammed Sadique Arif Khan

Versus

State & Ors.

DATE OF JUDGMENT : 01.11.2007

HON'BLE DR. VINEET KOTHARI,J.

Mr. B. R. Mehta, for the petitioner.
Mr.O. P. Boob, G.A. for the respondent State.

BY THE COURT:

1. Heard learned counsels.

2. The only grievance raised by the learned counsel for the petitioner in the writ petition against Annexure 2 is that the demand of Rs. 5,57,096/- was raised by the respondent Mining Engineer, Chittorgarh against the petitioner without any order determining the said amount in accordance with law after giving a Show Cause Notice and an opportunity of being heard in the matter.

3. Learned counsel for the respondent State farily submits that an opportunity of hearing ought to have been provided to the petitioner before issuing the order (Annex. 2)

dated 09.11.2004.

4. In the facts and circumstances of the case, this writ petition is disposed of with the direction to the respondent no. 2, Mining Engineer, Chittorgarh to issue a Show Cause Notice to the petitioner in the first instance of and provide him a reasonable opportunity of being heard in the matter and to rebutt the allegations made against him for demanding the amount of royalty for the mine excavated by the petitioner before raising said demand. Its only after a proper determination order is passed by the Mining Engineer that he can ask the petitioner to deposit the said amount subject to his further remedy in law under the provisions of the Act.

5. Accordingly, this writ petition is allowed. Order dated 09.11.2004 (Annex.2) is quashed and the matter is sent back to the Mining Engineer, Chittorgarh for fresh determination of liability of the petitioner, if any, in accordance with law. The petitioner will appear before the Mining Engineer in the first instance on 05.12.2007. No order as to costs.

(Dr. VINEET KOTHARI) J.

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ITEM NO. 4